

§ 228.305

17 CFR Ch. II (4–1–02 Edition)

except as indicated in paragraph (b) of this Item 304T.

(b) *Special disclosure standards for issuers to whom this Item 304T applies.* An issuer for which this Item 304T applies may comply with § 228.304(a)(3) in the following manner:

(1) If Arthur Andersen LLP (or the foreign affiliate of Arthur Andersen LLP, if applicable) has already provided the issuer with a letter addressed to the Commission stating whether it agrees with the statements made by the issuer in response to § 228.304, and, if that letter indicates that it does not agree, stating the respects in which it does not agree, the issuer shall file that letter as an exhibit to the report or registration statement containing this disclosure; or

(2) If the issuer has not yet received that letter and cannot obtain it after reasonable efforts, compliance with § 228.304(a)(3) is not required.

(c) This temporary section will expire on December 31, 2002.

[67 FR 13535, Mar. 22, 2002]

EFFECTIVE DATE NOTE: At 67 FR 13535, Mar. 22, 2002, § 228.304T was added effective Mar. 18, 2002 through Dec. 31, 2002.

§ 228.305 [Reserved]

§ 228.306 (Item 306) Audit committee report.

(a) The audit committee must state whether:

(1) The audit committee has reviewed and discussed the audited financial statements with management;

(2) The audit committee has discussed with the independent auditors the matters required to be discussed by SAS 61, as may be modified or supplemented;

(3) The audit committee has received the written disclosures and the letter from the independent accountants required by Independence Standards Board Standard No. 1 (Independence Standards Board Standard No. 1, *Independence Discussions with Audit Committees*), as may be modified or supplemented, and has discussed with the independent accountant the independent accountant's independence; and

(4) Based on the review and discussions referred to in paragraphs (a)(1)

through (a)(3) of this Item, the audit committee recommended to the Board of Directors that the audited financial statements be included in the company's Annual Report on Form 10-KSB (17 CFR 249.310b) for the last fiscal year for filing with the Commission.

(b) The name of each member of the company's audit committee (or, in the absence of an audit committee, the board committee performing equivalent functions or the entire board of directors) must appear below the disclosure required by this Item.

(c) The information required by paragraphs (a) and (b) of this Item shall not be deemed to be "soliciting material," or to be "filed" with the Commission or subject to Regulation 14A or 14C (17 CFR 240.14a-1 *et seq.* or 240.14c-1 *et seq.*), other than as provided in this Item, or to the liabilities of section 18 of the Exchange Act (15 U.S.C. 78r), except to the extent that the company specifically requests that the information be treated as soliciting material or specifically incorporates it by reference into a document filed under the Securities Act or the Exchange Act.

(d) The information required by paragraphs (a) and (b) of this Item need not be provided in any filings other than a registrant proxy or information statement relating to an annual meeting of security holders at which directors are to be elected (or special meeting or written consents in lieu of such meeting). Such information will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

[64 FR 73401, Dec. 30, 1999]

§ 228.310 (Item 310) Financial Statements.

NOTES: 1. Financial statements of a small business issuer, its predecessors or any businesses to which the small business issuer is a successor shall be prepared in accordance with generally accepted accounting principles in the United States.

2. Regulation S-X (17 CFR 210.1 through 210.12) Form and Content of and Requirements for Financial Statements shall not apply to the preparation of such financial statements, except that the report and qualifications of the independent accountant shall comply with the requirements of Article 2 of